PUBLIC PROSECUTOR v. SIVAPARAGASAM

[A. Cr. J. (Hepworth J.) September 2, 1961]

[Penang — Criminal Appeal No. 20 of 1961]

Criminal Law and Procedure — Possession of weapon — Corrosive and Explosive Substances and Offensive Weapons Ordinance, 1958, ss.6 and 6A — Whether possession must be in any public place.

The respondent who had been charged under section 6A(1)(a) of the Corrosive and Explosive Substances and Offensive Weapons Ordinance, 1958 was acquitted on the ground that possession of the weapon had not been in a public place. On appeal by the Public Prosecutor,

Held: on a true interpretation of sections 6 and 6A of the Ordinance, the omission of the words "in any public road or place" in section 6A was intentional and that the legislature intended the offences set out in section 6A to be offences wherever committed.

CRIMINAL APPEAL.

Raja Mohd. Redzuan (Deputy Public Prosecutor) for the appellant.

Respondent in person.

Cur. Adv. Vult.

Hepworth J.: The respondent had been charged with carrying a knuckleduster contrary to the provisions of section 6A(1)(a) of the Corrosive and Explosive Substances and Offensive Weapons Ordinance, 1958. The learned Magistrate had acquitted and discharged the respondent at the close of the prosecution case on the ground that as the place in which he was found carrying the knuckleduster was not a public place no offence had been committed. From this order the Public Prosecutor appealed.

Under section 6 it is an offence (a) to carry, etc., (b) an offensive weapon, (c) in any public road or place, (d) otherwise than with lawful authority or for a lawful purpose. In section 6A it is an offence (a) to carry, etc., (b) a scheduled weapon, (c) otherwise than for a lawful purpose. No reference is made in section 6A to a public road or place.

An offensive weapon is defined in section 2 of the Ordinance as including any instrument which if used as a weapon of offence is likely to cause hurt. A scheduled weapon is defined in section 2 of the Ordinance as meaning any offensive weapon specified in the Second Schedule to the Ordinance. One of the weapons specified in the Second Schedule is a knuckleduster. It cannot be argued that a knuckleduster is anything other than an instrument which if used as a weapon of offence is likely to cause hurt. Similarly all the other weapons specified in the Second Schedule are clearly instruments which if used as weapons of offence are likely to cause hurt. In other words all the instruments specified in the Second Schedule come within the definition of an "offensive weapon" and indeed are referred to as offensive weapons in section 6A. It follows that if the offences set out in paragraph (a) of sub-section (1) of section 6A of the Ordinance are only offences if committed in any public road or place that part of the section would be redundant because such offences would be covered by section 6.

For these reasons I think it is quite clear that the omission of the words "in any public road or place" in section 6A is intentional and that the legislature intended the offences set out in section 6A to be offences wherever committed and those set out in section 6 only to be offences if committed in a public road or place.

I accordingly allowed the appeal, set aside the order of acquittal and discharge, and ordered the case to be remitted to the Magistrate for him to call upon the respondent for his defence.

Appeal allowed.

BACHAN SINGH v. KULASINGAM

[D. C. A. (Ambrose J.) September 23, 1961]

[Singapore — District Court Appeal No. 15 of 1961]

Money and moneylending — Keeping of proper accounts — Moneylenders Ordinance (Cap. 193), s.7(1) — Moneylenders Ordinance, 1959, s.19 — Applicability to ex-moneylender — Whether District Judge had power to dismiss appellant's claim.

The appellant, an ex-moneylender, brought an action to recover $605.82 on a promissory note made to the respondent on February 2, 1958 when the appellant was still a moneylender within the provisions of the old Moneylenders Ordinance (Cap. 193). In the Court below the learned District Judge, finding that the accounts of the loan were not in order, (as required by section 7(1) of the old Ordinance) dismissed the appellant's case. On appeal,

Held: the learned District Judge had no power to dismiss the appellant's claim because on November 8, 1959, the date on which the District Judge made his order, the appellant was neither subject to the provisions of section 7 of the old Ordinance (as it had been repealed on September 11, 1959) nor section 19 of the new Ordinance (because the appellant was not a "moneylender" under the new Ordinance).

DISTRICT COURT APPEAL.

R. Murugason for the appellant.

Respondent absent.

Ambrose J.: This was an appeal by the plaintiff in the action against a decision of the District Court. The action was brought to recover the sum of $605.82 alleged to be due upon a promissory note dated the 21st February, 1958. It was not disputed that at the time of making the loan the plaintiff was a moneylender within the meaning of the term as defined in the old Moneylenders Ordinance (Cap. 193 of the 1955 edition of the Laws of the Colony of Singapore). The learned District Judge found that the account of the loan which the plaintiff was required to keep under section 7(1) of the old Moneylenders Ordinance was not in order. For that reason he dismissed the plaintiff's claim.

The District Judge made three criticisms as regards the account in question. The first was that in entering the payment of a sum of $120 made by the defendant on the 2nd March, 1959,

the plaintiff wrote $120 over other figures. In my view, although the entry appeared untidy, it was legible and showed the correct amount, and the plaintiff complied with the requirements of section 7(1).

The second criticism made by the District Judge was that this amount of $120 was credited to interest instead of principal. In my opinion, this criticism was not justified. The agreed rate of interest was 48% per annum. The amount of the principal was $700. The interest payable per mensem was therefore $28. A sum of $28 was paid as interest on the 2nd April, 1958; and another sum of $28 was paid as interest on the 3rd May, 1958. Ten months' interest was in arrear on the 2nd March, 1959. This amounted to $280. The plaintiff was fully entitled to treat the sum of $120 paid by the defendant on the 2nd March, 1959, as a payment to interest.

The third criticism was that a sum of $100 which was paid by the defendant to the plaintiff on the 8th November, 1959, was credited to interest instead of principal. I had to consider whether that criticism was justified. On that date the plaintiff was entitled under the terms of the promissory note to interest at the rate of $28 per month for 20 months, i.e. $560, less the interest already paid, which was $176. The arrears of interest on that date thus amounted to $384. He was, therefore, entitled to credit the sum of $100 to interest. The uncontradicted evidence of the plaintiff was that he ceased to carry on business as a moneylender from the 11th September, 1959, when the old Moneylenders Ordinance was repealed by the Moneylenders Ordinance, 1959. In my opinion, the mere collection of outstanding debts after the coming into operation of the Moneylenders Ordinance, 1959, on the 11th September, 1959, did not make him a moneylender within the meaning of the term as defined in the new Ordinance. That being so, the interest which he could recover was limited to 20% per annum under section 23(1) of the new Ordinance. But, in my opinion, this sub-section did not impose on him any obligation to credit the sum of $100 which was paid to him on the 8th November, 1959, to principal or to rewrite his account of the loan to show the amount he was entitled to recover under section 23(5).

Furthermore, on the 8th November, 1959, the plaintiff was not subject to the obligations of section 7 of the old Ordinance, as it had been repealed on the 11th September, 1959. Neither was he subject to the obligations of section 19 of the new Ordinance which corresponds to section 7 of the old Ordinance, as in my view he was not a moneylender within the meaning of the term as defined in the new Ordinance. The District Judge had, therefore, no power to dismiss the plaintiff's claim either under section 7(2) of the old Ordinance or under section 19(5) of the new Ordinance.

It was for the above reasons that I allowed the plaintiff's appeal, set aside the judgment of the District Court and gave judgment in favour of the plaintiff for the amount claimed and costs of the appeal.

Appeal allowed.

Solicitors: *Murugason & Co.*

LEE WAH BANK LTD. v. THE COMMISSIONER OF FEDERAL CAPITAL OF KUALA LUMPUR

[A.C.J. (Ong J.) September 29, 1961]

[K.L. — Originating Motion No. 15 of 1961]

Local Authority — Rating — Assessment of "Annual Value" — Town Board Enactment (F.M.S. Cap. 137), ss.2, 25 and 44 — Premises in course of construction — "Vacant or unoccupied or only partially built upon" — Meaning of "occupation" — Observations on English decisions on rateable occupation.

The applicant appealed under section 44 of the Town Board Enactment against the decision of the Commissioner that a certain holding of the Bank is liable to assessment based on an annual value of $49,000 with effect from January 1961, the result being reached by the exercise of an option of fixing the annual value at one-tenth of the improved value of the holding in accordance with the second proviso to the definition of "annual value" in section 2 of the said Enactment. It was argued for the Bank that the Commissioner had no power to exercise the option because the holding at the relevant time contained over its entire area a building in the course of construction, and that it therefore cannot be correctly described as "vacant or unoccupied or partially built upon" and as such the Commissioner had no ground for exercising the option as he purported to have done. It was argued for the Commissioner that rates are imposed on all holding by section 25 of the said Enactment and that a holding as such, is rateable, and not by reason of a building being situate thereon.

Held: as the holding was not vacant or unoccupied or only partially built upon it was not open to the Commissioner to exercise the option as he had purported to do. The alternative assessment was also not available because the holding was bringing in no rent.

Per Curiam: "It is quite true that in this country rates are levied on owners and not on occupiers as in England. English decisions on rateable occupation are therefore not of much assistance so that the question now before the Court must be decided without the benefit of guidance of any precedent."

Cases referred to:—

(1) *London County Council* v. *Wilkins* [1957] A.C. 362; [1956] 3 W.L.R. 505, 509.

(2) *Newcastle City Council* v. *Royal Newcastle Hospital* [1959] 1 All E.R. 734; [1959] 2 W.L.R. 476, 479.

ORIGINATING MOTION.

L. P. Thean for the applicant/appellant.

D. G. Rawson for the respondent.